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The Province of Alberta

IN THE MATTER OF "THE NATURAL GAS UTILITIES ACT"

—and—

IN THE MATTER OF an Enquiry into Scheme to be adopted for Gathering, Processing and Transmission of Natural Gas in Turner Valley

---

G. M. BLACKSTOCK, Esq., K.C., *Chairman*

Dr. E. H. BOOMER, F.C.I.C., *Commissioner*

Session:

CALGARY, Alberta November 5th, 1945

VOLUME 49

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I N D E X

VOLUME 49

November 5th, 1945.

WITNESSES	Page
Corrections to Volumes 36, 37, 39, 40, 41, 42,	3789.
ROBERT WINSLOW HAMILTON (Continued)	
Cross-Examination by Mr. Chambers	3800.

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9.30 A.M.Session.
November 5th, 1945.

MEMORANDUM OF CORRECTIONS OF TRANSCRIPT

VOL. 36

Evidence of Kenneth R. Teis

Page	Line	Corrections
2738	16	Change first word "specialist" to "specializing"
2739	7	Change word "Donahue" to "Donellan"
2743	25	Delete word "the" between the words "of" and "pipe"
	26	Delete words "of pipe" at end of line.
2747	1	Insert comma after word "pipe"
	6	Change words "special well" to "spiral weld"
	9	Change words "special well" to "spiral weld"
2748	24	Change word "wells" to "welds"
	32	Change words "which would be larger than" to "are longer"
	22 to 24	Place bracket before word "there" in line 22 and after word"12.4 miles" in line 24.
2751	4	Change words "one item" to "item one".
2753	9	Change word "latter" at end of line to "letter"
	10	Change words "is a" to "of the" and word "referring" to"refer"
	25	Change words "comprised in" to "comprising"
2754	10	Change the word "line"where it appears the second time to "design"
	24	Delete word "from" (first word in line) and substitute words "for a valuation of"
	25	Delete words "I consider" and start new sentence with word "My" and insert commas after words "concept" and "say"
2755	13	Change words "if put in" to "if they put it in"
	24	Change word "and" to "but"
	27	Add word "do" at end of line.
2756	30	Change word "a" to "the"
2757	2	Add word "it" after word "valuation" and before word "is"
	7	Delete words "of any concern to embark upon"
2759	2	Change word "values" at end of line to "flues"
	15	Delete word "it" after word "consider" and before word "to"
2764	3	Insert after the word "brief" and before the word "light" the words "in the"
	7	Insert word "it" after word "would" and before word "be"
2779	16	Change word "a" to "the" between the words "reproduce" and "system"
2780	22	Insert word "when" between words "exactly" and "it"
	25	Change word "wasted" to "wasting"
2783	4	Insert word "to" between the words "use" and "that"
2785	6	Change word "ultimate" to "optimum"
2787	14	Insert comma after word "made" and before word "in"
2793	6	Change word "lower" to "wall"
	12	Eliminate decimal point between figures 12 and 55 - $1.1255
2797	10	Change words "special weld price" to "spiral weld pipe"
	14	Change words "special pipe" to "spiral pipe"

November 6th, 1944.

MEMORANDUM OF CORRECTIONS OF DEAN'S CASE

Vol. 36

Evidence of Kenneth R. Lein

Page	Line	Correction
2741	16	Change first word "specializing" to "specializing"
2749	7	Insert w in "Dunphre" to "Dunmiler"
2762	22	Delete word "the" between the words "ord" and "pc"
		Delete word "" between "and" and "".
2767	1	Insert comma after word "Dial"
	2	Change word "Dial" to "Dial"
	9	Insert "Dial" to "Dial"
2774	24	Change word "walk" to "walk"
	22	Insert words "which would be larger than" to "long long"
	22 to 24	Place period after word "years" in line 22 and start word "It" in line 24.
2801	4	Change word "the" to "the".
2812	9	Change word "Dial" to "Dial"
	10	Change word "" to ""
	22	Change word "" to ""
2814	10	Change word "" to ""
		Delete word ""
	24	Delete word ""
	7	Delete word ""
	8	Delete word ""
2822	14	Insert word ""
	21	Insert word ""
		Insert word ""
		Insert word ""

	Page	Line	Corrections
	2801	20	Change word "gauge" to "gates"
	2807	24	Change word "Donahue's" to "Donellan's"
VOL.37	2813	28	Change word "read" to "view"
	2819	24	Delete word "the" (second word in line)
	2820	31	Change word "mistaken" to "misstated"
	2822	1	Delete first word "And" and commence paragraph "While"
		10	Add words "or Standard line pipe" at end of line
		12	Delete words "or standard line pipe" at end of line
	2823	7	Change second word "welding" to "welded"
	2830	20	Add word "is" between words "good" and "as"
	2832	23	Delete the words "the materials of the entire job"
	2833	4	Delete the words "that in" where they appear after the word "think" and before the word "my" and substitute "and"
	2848	5	Change the words "which will" to "so as to"
	2850	14	Add word "For" before word "what"-at first of line
	2851	12	Change word "it" to "there" at end of line
		13	Delete comma between words "been" and "any" and delete comma between words "it" and "going"
	2862	20	Insert "a" between words "considered" and "dual"
	2856	8	Change word "amplify" to "simplify"
	2857	18	Delete word "the" between words "at" and "high"
		19	Add word "being" after word "not" and before word "required" and change word "or" between words "compress" and "transport" to "to"
	2858	8	Insert word "made" between words "have" and "is"
		21	Change "hrew" after word "system" to "grew"
		25	Change "connection" to "construction"
	2860	5	Insert word "think" between words "not" and "that"
	2862	15	Change the word "require" to "acquire"
		27	Change "which" to "in that"
	2865	4	Change "think to "know" (last word)
		27	Change "I was taking" to "I have taken"
		28	Delete word "as" between words "was" and "a"
	2866	13	Change "affected" to "evidenced"
	2868	1	Delete the word "not" between the words "do" and "know"
		8	Delete the word "and" between the words "system" and "the"
		11	Change "build" to "buy" (last word)
		16	Place period after word "unit" and commence new sentence "As a whole, I"
	2869	25	Insert word "ditching" between "your" and "and"

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3021	18	Delete the word "It" where it occurs after the word "occupy" and before the word "is" and substitute "The omission of page 40"
3027	25	Change the word "explained" to the words "may explain"
	29	Change the word "him" to "Mr.Teis"

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Corrections

Page	Line	Corrections
3028	4	Change word "referred" to "refers"
	7	Change the word "was" (first word in line) to "has been"
3030	28	Delete words "all our"
3031	16	Delete word "gauge" at end of line
3032	15	Insert word "as" between the words "felt" and "it". Change the period after "cent" to comma, change capital "T" in word "that" to small "t" and insert the word "it" between tje words "that" and "supports"
3033	16	Change word "show" to words "as to"
	19	Change figures "9.56" to ".9546"
	20	Change figures "4.146" to ".414"
	22	Insert word "other" between words "comparison" and "than"
3038	4	Change "10%" to "more than 8%"
	7	Insert the words "value of" between the words "the" and "stock"
2045	11	Change word "filed" to "to file"
	12	Change words "which is" to "it is only"
3046	27	Insert word "certain" between words "not" and "I"
	28	Change word "cannot" (first word in line) to "would have to"
	29	Add word "but" before word "some" at first of line
3047	19	Change word "in" to "of"
3049	11	Delete word "the" between words "of" and "Turner" and insert words "being a" between worDs "Valley" "gas"
3053	17	Add word "sign" at end of line
	22	Insert word "written" in blank space between words "the" and "one".

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3064	30	Change word "burning" to words "burned in" and insert after word "boilers" and before word "on" the words "and used"
3067	13	Insert the word "but" after the word "yes" and before the word "the"
3068	11	Delete the word "obtaining"
	28	Change word "conditional" to "additional"
3070	30	Change words "in it" (last two words in line' to "accruing"
3077	13	Insert the words "the existing" after the word "in" and before the word "gas"
3079	10	Change word "used" to "made" and delete the words "bit of" occurring before the word "gasoline"
3084	10	Change word "get" to words "pay for"
3091	7	Insert quotation mark between words "said" and"I"
	9	Insert quotation mark between words "pensive" and "he"
3093	18	Change word "one" to words "an increase"
3095	9	Change word "One" to "It" and insert words "similar to" between words "taken" and "the"
	14	Insert word "for" between words "off" and "any"
3096	3	Delete word "will"
3101	12	Change word "shall" to "would"

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Page	Line	Corrections
3106	11	Change words "are not available for" to "may not be understandable by"
3112	7	Change word "sheet" to "sheets"
3116	21	Change word "wholly" to "apart"
3119	3	Add words "for him" after word "and" and before word "to"
	4	Change "Those products" to "this product"
	14	Change "cannot" to "could not"
	18	Change words " a lot of labour" to "the industry"
3120	2	Change first word "and" to "in" and add word "gas" after "octane"
	6	Change word "got" (second last word in line) to "left"
3122	29	Change "engineer" to "engineering"
3126	13	Change word "estimate" to "statement"
3127	9	Change word "first" to "deferred"

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VOL. 41

3136	18	Delete word "and" and commence new sentence "The reasonableness"
3146	2	Insert the words "the Company" between "well" and "should"
	3	Change word "point" to "pointed"
	4	Change word "debentures" to read "debenture interest"
3147	29	Change word "seventeen" to figures "$1700"
3150	28	Change "Manager" to "management"
3153	10	Change "and it was" to "as it was"
3154	8	Change word "low" to "bottom hole"
3170	28	Change "and" to "but"
3171	8	Place period after "entailed" and commence new sentence "During etc."
3172	13	Change "Corporation" to "Company"
	14	Delete "and" and place bracket before "if" and after "man"
3176	6	Change "served" to "received" and delete "and" after word "installed" and commence new sentence "It was tested etc."
3178	2	Change "Jerry B.Forsier" to "J. B. Foesier"
3187	5	Insert words "invoices for" between words "many" and "the"
3190	10	Change "plant" to "product"
3194	26	Insert word "effect" between words "dual" and "you"
3199	29	Change figures "$82,482.78" to $41,380.32"
3202	21	Change figures "$80,000.00" to "$41,000.00"

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Corrections

Evidence of Robert Donellan

VOL. 42

Page	Line	Corrections
3219	15	Change "101-A" to "102-A"
3220	4	Change figures "$28,856.47" to "$28,836.47"
	6	Change figures "$28,856.47" to "$28,836.47"
	8	Change figures "$728,655.85" to "$728,653.85"
	9	Change "were" to "it is"
	31	Change figures "11.93%" to "11.39%"
3224	16	Change "laying" to "to lay"
3225	6	Change "a running" to "an accompanying"
	19	Change "I have" to "had I"
3226	1	Change "weigh" to "weight"
	13	Change "for" to "from"
3227	11	Insert word "they" after word "those" and before "are"
	15	Change "I understand the 10 pounds applies" to "The 10 pounds was applied" and delete "of totals" at end of line.
3229	6	Change "No and responses like that to the extension" to "No and items like that cause the extension"
3230	22	Insert word "at" in space between "arriving" and "what"
	27	Add word "thousand" after "20" at end of line
3231	2	Change "that" to "when"
	12	Insert words "meters and fittings, Mr.Hill" between words "many" and "by"
3232	15	Delete word "bits" and insert word "prices"
3236	15	Insert word "will" between words "you" and "note" and change one to "statement"
	22	Add after word "construction" the words "for 1945"
3239	4	Delete word "my" where it occurs between "that" and "money"
	14	Delete word "was" where it occurs between "money" and "started"
3240	7	Change "that" to "then"
3242	17	Add "etc." at end of line.
3244	23	Change "March" to "July"
	25	Change figures "$3,009.00" to "$3,901.00"
	27	Change figures "$3,025.20" to "$325.70"
3245	23	Change "8 and 5 inch" to read "8-5/8""
	28	Delete word "for" after word "installation"
2246	16	Put period after yesterday, delete "to make sure" and commence new sentence "We had etc."
	24	Add "If" at first of line before "they" and change "this" to "them"
	27	Change "that" to "them"
3247	8	Change word "dollars" to "dollar item"
	13	Change "dollars" not "m.c.f." to "M.C.F." not "dollars".
	26	Change "B" to "V"
3249	1	Change word "to" to "my assistant for"
3253	26	Delete word "just"
3254	15	Put period after word "Act" and commence new sentence "This is" etc.
3260	16	Delete words "the-estimate plus" and the word "to" at end of line 15 and change word "plus" after "administration" to "and"

Corrections

Page	Line	Corrections
3263	21	Insert word "not" between words "are" and "the"
	25	Change word "conceive" to "believe"
	29	Change word "as" to "in"
3264	2	Change the comma after word "account" to period and start new sentence "in a" etc.
	16	Insert comma after word "before" and the following words "might when considering"
	19	Change "flipped" to "tripped"
	21	Delete word "cost" and substitute "excess over cost"
3265	10	Delete "And" (first word) and substitute "At"
3271	24	Change word "charged" to "changed"
	27	Insert word "by" between words "replaced" and "this"
3273	4	Change word "the" to "one" where it occurs between "particularly" and "point"
3275	30	Delete words "be implemented" and substitute "have to be accepted"
3276	9	Change "worked" to "work out"
	10	Add "s" to word "department" making it plural
	13	Change "confirmation" to "allocation"
	29	Insert "if" between "example" and "I" and change "7th" to "30th"

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THE CHAIRMAN: Gentlemen: When we adjourned the Hearing some few weeks ago I left this bench accompanied by my colleague and friend, the late Dr. Boomer. Today I return alone deeply conscious that by his untimely passing I and all of us here have suffered a serious and perhaps a devastating loss. Although I had known Dr. Boomer for some years it is only since the creation of this Board that I became intimate with him and then discovered and learned to appreciate the measure of his ability, the depth of his scholarship, his wisdom and his kindly patience.

It has been said that he was held in high esteem by the Alberta Natural Gas and Oil industry. That may be so but what a sadly limited statement that is. Perhaps it would be better to say that he was held in high and affectionate esteem by the whole engineering profession throughout the Dominion of Canada; by the Dominion Government for his work which he did in association with the National Research Council throughout the war; by the Provincial Government for the many duties and responsibilities which he undertook for them and which he so ably discharged; By the University of Alberta where he toiled so tirelessly for so many years and where he always was a tower of strength; by the scores of young men scattered throughout the world today holding positions of trust and great responsibility, all of whom are proud to say that they graduated under Dr. Boomer; and by all of us here because of his profound knowledge of the matters we are dealing with, and because of his genial, kindly personality; indeed, it is not too much to say that he was held in high and affectionate esteem by every one with whom he came in contact.

To Canada, to this Province, to the University of Alberta, to the gas industry, and to us here concerned with this Hearing, his passing is an irreparable loss, and to me upon whom there now devolves a grave and a heavy responsibility, the loss is indeed a very heavy one.

I will not speak of his work and his achievements as a teacher, of his work as an engineer in chemical research, or of his immense contribution in chemical war work, or his work on this Board, except to say that all of his efforts spelled one success after another. What he has done in those various spheres will remain as living monuments to his memory.

And yet, Gentlemen, in spite of his many accomplishments, in spite of his unsurpassed knowledge, in spite of his learning and of his ability, in spite of his successes in all his endeavours, he remained an essentially modest, if not a man of great humility, and it is perhaps that quality that is the best evidence of his greatness. Many times I have asked him why he carried on with teaching and with the hard work of administrative Boards when so many glittering prizes in his profession were his for the asking. His reply - "I like the work and am more interested in that than in money".

There we have the true measure of the man - one who was truly great - and we who remain must most deeply regret his passing, but we will cherish always the memory of a fine scholar and able administrator and a sincere friend.

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MR. STEER: Mr. Chairman, without hoping to be able to add much to the eloquent words which you have spoken in memory of your deceased colleague, I think it is fitting that I, on behalf of the Bar, and especially those who have been closely associated with him, should express the profound sorrow which we feel at the untimely death of your fellow Board member. Such an event, when it does occur, is bound to affect us all deeply under any circumstances, but in the present case our regrets are deeper because of the nature and importance of the wide variety of public services which Dr. Boomer was giving to Alberta and to Canada, and to the fact that those services were perhaps just beginning to be generally recognized. He was one of those rare spirits that we happily find in our country interested in our public life, whose interests were directed by pure kindness. He preferred above other great rewards which he might have got, the satisfaction of teaching bright students, and scientific investigation, conducted by him as we know or suspect, on the topmost levels and the practical application of his discoveries in the public interest. His real achievements in that direction, I feel will be fully appreciated only when the innermost history of the scientific end of this war is known.

We will all remember him as a humble and lovable man whose loss to his country at the early age of 45 years, it is no exaggeration to say, as you, Sir, said before, is irreparable.

It is a consolation to us to know that one of the greatest pieces of work which he was initiating at the time of his death is likely to be carried to completion, and that some day there may be found on the University campus

a scientific building which will be an enduring memorial to Dr. Boomer.

THE CHAIRMAN: Well, Gentlemen, before we proceed with the Hearing, I would like to know if there is any question as to my right to continue alone. I admit there might be some doubt as to the wording of the Statute because when the amendments were framed in June, I am afraid we overlooked the contingency of death. On the other hand, it could be argued that those amendments are wide enough to permit of my sitting alone, but I think that Counsel should have an opportunity of expressing if they wish, their views on that subject.

MR.CHAMBERS: It seems to me, without having given exhaustive consideration to the matter, that Section 3(2) of the Act pretty well covers the situation and Section 3(2) reads in these words:

> " In the case of the absence of any member or members of the Board, or of his or their inability to act, and in the case of any vacancy or vacancies on the Board, the member or members of the Board present may exercise all the jurisdiction and powers of the Board."

My own view under that is that that gives you power to continue, but this thought has occurred to me, the Government no doubt will fill at an early, or at a date, the Chairmanship of the Consevation Board . Now when and if that is done, it does seem to me that that member, that man, would automatically, by virtue of his office, be a member of this Board. In any case I am not particularly worried about it, because I think by the time that this Commission has done its work, or this is completed, that the

Legislature will probably be in session and no doubt any question of that nature will be cleared up. That is my own view.

THE CHAIRMAN: The only thought I had in connection with that section, Mr. Chambers, is whether I would have to start all over again and I am not going to do that.

MR. FENERTY: I have not given it very much consideration because any suggestion leading to the conclusion that we would have to start all over again is a very terrible thought, but it does seem to me that the most recent amendment to the Act, assented to on July 26th, does not contemplate and does not use apt words to meet this situation in any way, and so far as this situation is concerned, we may be back to the position we were in under the judgment of the Appellate Division. I do not know what the result is and I am not saying more than I have said.

THE CHAIRMAN: Mr. Harvie?

MR.HARVIE: Mr. Chairman, I feel that there are arguments both ways as to your jurisdiction due to these circumstances, but so far as we are concerned, we are not raising any objection to you proceeding, and Mr. Chambers' remarks are very apt, that if there should arise any objection, it can be cleared up, and so long as that is done, that is satisfactory.

THE CHAIRMAN: I have already made arrangements for that. Have you anything, Mr. McDonald?

MR. McDONALD: No, not other than just we have no objection to you proceeding.

TJE CHAIRMAN: All right, Mr.Hamilton. Oh, excuse me,have you anything Mr.Steer?

MR. STEER: Nothing, Mr.Chairman, except I think it would be wise to have legislation passed.

THE CHAIRMAN: Oh yes.

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ROBERT WINSLOW HAMILTON (Continued).

Cross-Examination by Mr. Chambers.

Q Mr. Hamilton, when the Hearing adjourned on October 11th, I think we were discussing the manner or the method of arriving at a proper amount to be deducted from the gross value of the physical plant and equipment in respect to existing depreciation. I think that was the last thing we were talking about.

A Yes sir.

Q Now to summarize it just briefly, as I understand it, you have recommended and are in favor of a formula of accrued depreciation based on the different throughputs and the service life.

A Substantially, sir.

Q Yes, there are one or two items on a straight life basis. You also told me, as I understand it, that the net value or the amount of the present rate base should not necessarily depend on or be affected by the manner in which future depreciation is to be computed. Do you recall that? I am referring to page 3772 of Volume 48, and the question was this:

"And do you suggest that the value or the amount of the present rate base should depend on the manner in which you are going to establish the depreciation in the future? A. Not necessarily, sir, no, but I say this that if it is the considered opinion that throughput is the proper formula for the company, that a considered opinion emanating from the same source will probably give you the same viewpoint there, with regard to its applicability in the past."

You follow that?,

A Yes, sir.

Q So that I take it from that answer that you say that the manner of computing existing depreciation for the purpose

of arriving at the present-day net value does not necessarily depend on the way the Board may set up depreciation for the future.

A That is true.

Q But as I understand it you feel that if the decision is made to use the throughput basis for the future, that that in itself, shall we say, is a strong argument or ground for its being used to ascertain the present-day value or the present-day depreciation in estimating the value of the plant. Is that a fair inference from what you have said?

A Yes, sir. I would not say that the decision as to how that depreciation is to be calculated in future is as important as the reasons which lead to that decision.

Q Now, Mr. Hamilton, this Natural Gas Utilities' Act was passed and came into force on the 29th day of March, 1944. I mention that now because I will probably make some reference to that date as I go along and that is the reason I picked that date rather than some other. Mr. Hamilton, on that date, I suggest to you that the Plant and Equipment of this Company, of Madison, was devoted to the public service by the Legislature when it enacted the Natural Gas Utilities' Act. Would you agree with that?

A Substantially, yes. You say that Plant. I say that "Plant" was devoted.

Q That Plant among other things, let us put it that way.

A Yes.

Q And as a result of that change in the set-up of this Company and this Plant, it became and is now necessary or advisable to fix the present value of the Plant which has been so devoted to public service. That is the reason we are talking about it.

A Yes.

Q A rate base?

A Yes.

Q I suggest to you and I am discussing with you the theory behind this public regulation. I suggest to you that the necessity for doing what we are doing arises because outsiders, that is consumers, now, for the first time, have in law an interest in the future earnings of this Company. Probably I should elaborate what I mean by that, that in the future if the earnings of this Company go beyond a certain figure, the Board, in the exercise of its jurisdiction, will say that they, rather than going into the pockets of the shareholders may go to ameliorate the rates of the consumer. That is the theory behind public regulation is it not?

A I would assume so.

Q In other words, what I am suggesting to you is this that from and after March, 1944, the date when this Act was passed, the consuming public and any other people that are getting service from this Plant are in effect definite partners - and I am not using that word in the strict legal sense - in the undertaking and its earnings. Would that be a fair way to put it?

A That is a useful point of view, yes.

Q Yes. Now then I suggest that another reason for the regulation or another matter which the Board has to direct itself to in carrying out its regulatory powers is this, is to ensure that the consuming public or the parties that are getting service are equitably and fairly dealt with as between themselves. Is that not your understanding of one of the functions?

A Yes, sir.

Q Now then, Mr. Hamilton, would you agree with this, is not the main reason or justification for the using of the throughput basis of depreciation for the future, that each and every purchaser of gas will contribute the same proportion per thousand cubic feet to pay for the Plant and equipment devoted to the service of the public of which he is one, throughout the next 25 or 30 years.

A Yes.

Q Is that not the main reason or one of the reasons you are in favor of computing future depreciation on a throughput basis?

A Yes.

Q And is it not so that the primary object of future depreciation charges is to accumulate enough funds during the years of operations to equal the investment in the final year? That is the purpose of depreciation.

A Yes.

Q Now I suggest to you, Mr. Hamilton, that the adoption of the throughput basis for computing depreciation that has heretofore occurred, that is prior to 1944, for the purpose of arriving at the present fair value of the property which is now devoted to the public service for the first time results or means in effect that the consumers in the future are made partners or beneficiaries in the past operations of this company.

A That is a little involved and I wonder if I could have that over.

Q Yes. I do not mind admitting that I just did not pick that out of the air.

MR. FENERTY: I do not want to interrupt cross-examination and I think all counsel have proceeded on the course of

not interrupting but my friend's question leaves me uncertain as to whether he is giving evidence that this Plant in fact is devoted to the public service for the first time, in contradiction of what Mr. Kirkpatrick claimed in his evidence that it was devoted to the public service since 1920-something. It occurs to me there is a conflict in the evidence between my learned friend and Mr. Kirkpatrick and he should either clear that point up or not assume it is devoted to the public service.

THE CHAIRMAN: Is it not a question . . . . .

MR. FENERTY: It is a statement to the witness that such and such is a fact and that is not proper cross-examination.

MR. CHAMBERS: I am cross-examining this witness and I am asking him to tell me.

MR. FENERTY: What I am saying is this, my friend says that it is now devoted to the public service for the first time and I submit that that is not proper cross-examination and that this witness did not say so.

THE CHAIRMAN: The witness agreed it was so. He agreed that this Plant was being devoted to the public service for the first time. Now in his direct evidence, he submitted that unit depreciation should be applied over the past years for the purpose of arriving at the value of the Plant at the date it first came into public service.

MR. FENERTY: If it is the witness' contention that it was devoted to public service for the first time then that will be open for cross-examination but I submit that is a statement from counsel that it is devoted to the public service for the first time and asking what the effect of that is when the witness did not say that . . . . . .

THE CHAIRMAN: I understood that he was asking the witness or he was testing - - he was attempting to test Mr. Hamilton on whether that unit method of depreciation should be applied in the future or I beg pardon, in the past as he proposes it should be used in the future. I presume that Mr. Chambers is in strong disagreement with that and he is trying to test Mr. Hamilton's theory.

MR. FENERTY: I quite appreciate that. And if the witness' opinion is as he tells us it is, that they are put to public service for the first time, then we will try and make what we can of that in cross-examination but if that is Mr. Chambers' statement then I think it is wrong cross-examination.

MR. CHAMBERS: As I understood, the witness agreed with me in that proposition that I put to him.

THE CHAIRMAN: I understood so.

MR. STEER: Mr. Chambers and Mr. Chairman, is it not so that Mr. Hamilton's submission is based on the proposition that this Madison Company or the Royalite Company if you like, along with it, is being brought under regulation for the first time?

THE CHAIRMAN: In respect of the Natural Gas Utilities' Act.

MR. STEER: Yes sir, and with great respect I do think that under the Act it is open, in my submission, to any counsel to test Mr. Hamilton's view that it is being brought under regulation for the first time. It can only be reviewed.

THE CHAIRMAN: I think the proposition is that the Royalite Company could have brought under regulation some years ago but in fact never was brought under regulation.

MR. STEER: Perhaps that is a matter for argument too.

THE WITNESS: Just to clear my own position with respect to this, I might say I was answering the question from a legalistic point of view and was not dealing philosophically with the question of whether the operations of the Royalite Company constituted a public service or otherwise.

MR. CHAMBERS: Now I will put the proposition to you again.

A I believe the reporter has the question if he might read it.

MR. CHAMBERS: All right, we will have the reporter read the question.

(By the Reporter reading) Q. Now I suggest to you Mr.Hamilton, that the adoption of the throughput basis for computing depreciation that has heretofore occurred, that is prior to 1944, for the purpose of arriving at the present fair value of the property which is now devoted to the public service for the first time results or means in effect that the consumers in the future are made partners or beneficiaries in the past operations of this company.

A No, I do not see that that follows at all.

Q MR. CHAMBERS: Does it not mean this that the amount that the future consumers have to pay must include something by way of return on whatever value is now fixed. That is one thing.

A Yes.

Q And they also have to supply depreciation to retire at the end of the period whatever amount is now arrived at by the Board as the physical value.

A Yes sir.

Q And as I appreciate your recommendation you say that the present value for the purpose of fixing rates for the future

should be fixed or should, as regards existing depreciation, depend on the amount of throughput in the past. Is that not a fair way of putting it?

A Yes.

Q And you say to me then that that method does not indirectly make the consumers for the future beneficiaries in respect to this Company's past operations.

A The partnership analogy was your own, Mr. Chambers. I am suggesting it is an imperfect analogy. The throughput formula justification does not necessarily find its sole justification in an attempt to bear an even hand as between one set of consumers in the future and another set of consumers in the future. It should find its justification as well in the future in an attempt to bear an even hand between the Royalite Company as owner of the assets and future consumers.

Q Now if you will remember - I certainly personally understood the previous answer that you gave me to mean that one of, if not the main reason for taking the throughput basis for the future was to have an even hand as between future consumers.

A That is correct.

Q Then I understood you to say prior to that that while the method of computing future depreciation - existing depreciation did not necessarily depend on the way you were going to compute for the future, yet that the reason underlying that would, prima facie at least, be a strong reason for using it in the existing depreciation. It was just testing that out.

A That is correct because I believe in the principle of throughput depreciation for this class of asset and I believe the principle is sound for general application.

Q You are not prepared then to go along with me in my suggestion that the effect of using the throughput basis for the purpose of arriving at the present-day value does not by its very nature make consumers of the future heirs or participants in what took place in the past?

A Oh, generally speaking, yes.

Q THE CHAIRMAN: I might not be quite clear on it. Would not that depend on the relationship between unit depreciation and the depreciation actually charged on the company's books? The beneficiary would be according to whether one was greater than the other.

MR. CHAMBERS: No, I suggest not, sir.

THE CHAIRMAN? I am just trying to follow through your theory.

MR. CHAMBERS: What I am getting at is this, that in arriving at a valuation, if you would compute your depreciation, your existing depreciation, on the amount of the throughput in the past, then the present valuation is arrived at largely by accident. I mean it is dependent on the past and that if Royalite had put through, or Madison, a very small throughput then these consumers for the future would have a much higher rate base due to a matter over which they had no control. In other words, I suggest the indirect effect of that is that doing it by a basis of accident, so far as this Board is concerned, my suggestion frankly is, with deference, that that is not the scientific way or the proper way to arrive at a rate base. And the witness appreciates that.

THE CHAIRMAN: I do too, Mr. Chambers.

MR. CHAMBERS: As I understand it, Mr. Hamilton, your recommendation in effect or your formula or your method in

effect says that the value or the rate base now to be fixed by this Board will depend to a considerable extent on the volume of gas handled by this Plant prior to March 1944.

A Yes.

Q On the other hand, Mr. Hill's basis of valuation disregards past throughput but gives effect to the fitness of the Plant to render the service to the consumer for the future, is that a fair way of putting it?

A Yes, I think Mr. Hill qualified himself slightly on the question of depletion, which is throughput.

Q Now then, Mr. Hamilton, I suggest to you, and I suggest it merely for the purpose of getting your reaction, I do not want to appear to be giving evidence - I suggest to you that accrued or existing depreciation or valuation for appraisal purposes, based merely on the proportion of past throughput, might very well be unfair and unsound in this respect that if the estimated future throughput is conservative or on the low side, present deduction for depreciation would be too great and excess deduction would never be restored or recovered by the Utility Company, Madison, and it would also lose a rate of return over the period. What do you say to that?

(Go to page 3810)

A Well I would say this first of all that the rate base determination which we recommend was the one which we preferred with the various that were available, not suggesting that there was any other point too and I consider the other consideration on other points is of value and furthermore that with respect to the particular matter which you now raise that the use of the through-put formula might be unfair, I agree it might be unfair.

Q It might work out that way ?

A Yes, so might any other system that can be devised.

Q And I think you were present were you not when the various Engineers gave their evidence about the reserve ?

A Unfortunately not.

Q Have you read -

A I have read some of them sir, yes.

Q I am putting this to you to see whether this is more or less your recollection of the evidence. All the Engineers intimated there was a considerable amount of uncertainty about what was in the ground and about how it is going to be recovered over the years and they all took the view before this Board that for the purpose of arriving at a marketable reserve it should be on the conservative side. Is that a fair way to put it ?

A That is correct. It has the effect that it tends to waste the gas against the past period rather than the future.

Q And if by reason of the estimates being conservative the actual operations over the years result in the system handling more than the Engineers predict it will for the purpose of their estimates then if that situation should finally take place and the amount of existing depreciation arrived at now by your formula

would work an injustice on the Company, would it not ?

A That factor taken by itself operates in that direction, yes.

Q Now there is another matter I would like to discuss with you Mr. Hamilton, along this same line. Should not the service life method in any event take into consideration and make allowance for altered conditions. Now what I have in mind is this. The changes in conservation regulations, the coming into operation of the absorption plant in 1933, and I suggest that your WH 11 of Exhibit 124 shows that there were drastic changes by reason of those two things I mentioned ?

A There have been changes, yes.

Q Well they may have been substantial ?

A I am not myself saying why they occurred. You asked me if they did occur for that reason but I know they did occur for some reason.

Q Now I understand it your method on WH 5 of Exhibit 124 takes Hill's value new and applies the gathered wet gas through-put percentage in order to arrive at the amount to be deducted for existing depreciation. That is in effect ?

A That formula on gathering lines and compressor system.

Q And WH 5 deals, that is on the gathering lines and compressors, that is right, yes, and on your suggested basis that is WH 4 and 5, if there had been no through-put in any year you would not take any recognition of or make any allowance for any physical depreciation. Is that right ?

A That is correct. For the reason that the physical aspect is de-emphasized by reason of Mr. Hill's statement that the assets were in such condition they would outlast the economic life.

Q Yes, but Mr. Hamilton, if the Public Utility had no plant there and we are going into the gas business for the first time and

had to build anew we would still have to amortize the cost even though the equipment would outlast the life of the field ?

A Right, say if the decision were made to erect such a plant.

Q As I recall it, Hill said the over-all depreciation was around 18%. Do you remember that ?

A I remember a figure like that.

Q That was on the pipe lines themselves, they were around 10% ?

A Yes.

Q And you come to a figure on WH 4 and 5 and 6 an average of 27.9856% do you not. Well on WH 4 27.33 ?

A The weighted average differed slightly between 27 and 28%.

Q And Mr. Hamilton, does not your figure roughly of 27% for through-put depreciation really amount to or represent amortization as opposed to actual depreciation of the property itself ?

A Would you give me the sense in which you use the term amortization in this connection ?

Q It is really a form of writing off the investment.

A I would say this, that the 27 or 28% is on this particular basis but merely the amount to be deducted from a gas system for the present purpose, what you call it, whether it is amortization depreciation or what you will. I do not think it makes any difference. The purpose is to establish an amount to be deducted for this purpose.

Q And doing it by a formula rather than having regard to the actual condition of the property ?

A Oh no. I would say this, that this formula would only be applicable on a very strong presumption as to physical conditions. That is, that the physical condition is such that the plant will last its economic life.

Q Oh yes. Now you know this, I think, from your study of the records of the various companies that a large part of the through-put prior to 1938 was non-revenue producing from the stand-point of dry gas sales ?

A Yes, for a certain period, I would not say for a fact the period.

Q I am not holding you down to 1938 ?

A It looks like 1934 to 1938 for that period.

Q And assuming that Government conservation came in about 1938, do you know that ?

A I will accept that as being about the time.

Q And as you say from 1938 on the whole setup of the through-put was changed according to those records of yours ?

A Through-puts are less.

Q And I think you will agree with me that the lines are not necessarily worn out for the purpose of doing this job in the ratio that the through-put took place in the past ?

A Would you re-state that. It is a little ambiguous to me.

Q Having in mind that this plant is to do a job now, and at the end of twenty-five years you would not suggest that the plant has been rendered less valuable for doing the job and I am not talking about value, I am talking about the inherent value by the ratio of this past through-put ?

A That is a little ambiguous Mr. Chambers. I do not want to split a hair but I think it is important to see that we have the same ideas in mind. Certainly it is true that to the extent that the gas has to pass through the lines its original function has to that extent been performed and its capacity to render service has been impaired because there is that much less service that can be rendered, but if you mean this, that

the plant's capacity to dispose or handle a stated future reserve is not affected by its through-put in the past I would agree with you substantially. I thought that is what you wanted.

Q Yes, in other words this Board is dealing with this equipment for the purpose of doing a job for the future and I am suggesting that its functions to do that job in the future is not diminished in the ratio or to the extent of the through-put in the past as compared with the total over-all through-put ?

A That is right.

Q Now if the past through-put is the proper method of estimating that accrued depreciation at this time how would you proceed Mr. Hamilton on that basis when the equipment such as pipe, machines, we will say were bought from other fields, say the United States where they have been used in the past for - and I will give you these and you can say your general views of these. Suppose they had been used in the United States in the first instance in some cases in the gas business in the United States or some of them have been used for oil lines or some of them for water lines, or some of them for say a sewage system. Now how would you apply this formula in this particular case to such equipment as that ?

A For this particular purpose take the landed cost of the pipe plus its installation price in the ground and depreciate it on through-put formula as from the point it went into the present location provided its physical condition was such that it would outlast the field. In other words the amount of gas it would have to handle down in Texas would not affect the situation at all.

Q That is the point I am getting at because gas has to go through

it down here rather than down in the States ?

A For this reason that the determination to spend a certain sum of money was predicated on the assumption that there was a certain service there that could be rendered by that material and the expenditure was justified on that basis and we are now trying to arrive at an apportionment of that total investment, the total cost which was incurred as between the persons who used it and got the benefit of it in the past, and the persons who will use it and have the benefit of it in the future. It is the same situation - not the same, but an analogous situation to adjusting property tax as between a vendor and purchaser when you sell a house. It is analogous to that.

Q Well, Mr. Hamilton, if this plant had been installed new in 1943 you would not of course have deducted any depreciation in arriving at the value at the end of 1943. Maybe a half year proposition, but leaving that aside.

A That is true, sir.

Q But you say as I take it from your WH 6 in Exhibit 124, the gathering lines actually there which will last the life of the field are now worth 36.24% less than new because gas has gone through them in the past year. Is that not in effect what you say ?

A I do not say what they are worth Mr. Chambers. This is a rate base determination which does not necessarily connote value at every point.

Q Oh I thought that you were trying to arrive at a present fair value for the purposes of rate base but you are not suggesting that ?

A I think we must be careful in using the term value. It is capable of innumerable interpretations.

Q Well then is this a fair statement that the rate base arrived at with the method you recommend would not necessarily represent the present day value ?

A Well it would represent present day value for this purpose but it might not be for some other purpose.

Q But its present day value ?

A Its present day value. But I want to be quite clear on that Mr. Chambers, I do not believe it is possible to use any one single formula which will give you a present day value which is satisfactory for every possible purpose to which that valuation might be employed.

Q Will you agree with me in this that the Board should for the purpose of fixing rates for the future endeavour to arrive at the present day value ?

A To arrive at a present day value which will be fair and equitable for the purpose that it has before it.

Q And that that present day value for this purpose should depend to a considerable extent on the use that was made of the plant and equipment in the past ?

A Precisely.

Q Well now I think you admit from your general knowledge and you have already told me probably that the Conservation laws were not in force in the Valley in 1936 ?

A I will agree.

Q Now we turn to WH 11 of Exhibit 124 and that shows annual throughputs of wet gas gathered as follows for these years. 1935 - 46,684,650 m.c.f. ?

A Right.

Q And for 1936 -60,693,290 m.c.f. ?

A Right.

Q And for 1937, 49,455,810 MCF?

A Right.

Q Now I am suggesting that the approximate average for those three years is 52,000,000 is that about right?

A It looks right.

Q Now turning to WH-12, on the next page. The dry gas scrubbed in those years is as follows:- 1935, 8,888,030 MCF?

A Right.

Q In 1936, 9,539,599 MCF?

A Right.

Q And in 1937, 9,576,437 MCF?

A Right.

Q Or an average, an approximate average of 9,000,000 a year?

A Right.

Q Now I suggest that these figures indicate to us that during those years an average of about 43,000,000 MCF was gathered and was not marketed and produced no dry gas revenue?

A Well I think we should be careful in that. The gathering system rendered a service and part of the subject matter that was transported was sold, but not dry gas.

Q Not dry gas? There was a certain quantity taken out in the absorption plant?

A That is right. But the hauling of wet gas was performed.

Q Oh yes. Now WH-11 of Exhibit 124, also shows the wet gas gathered in 1943, of 21,897,787 MCF?

A Right.

Q And WH-12 of the same Exhibit shows that dry gas scrubbed in that year 1943, was 14,514,151 MCF?

A Right.

Q Now then, in other words, as I understand it, you are for the

purposes of your appraisal or net valuation, for the purpose of this Hearing, charging against Madison for the benefit of future consumers, past or accrued depreciation based on or measured by large quantities of gas that has been flared?

A In the first place I think this might be a timely point to make this observation in comparing the quantities of wet gas and scrubbed gas. You must be careful to bear in mind they are not the same thing; that the 14,514,151 MCF in 1943 shown on the scrubbed gas table, as compared with 21,897,787 MCF wet as shown on the gathering table, does not necessarily mean that the difference between those two figures has been flared.

Q Oh yes. I should have mentioned that. There would be a quantity used for other purposes?

A Yes.

Q But a substantial part.....

A Quite a substantial part of that difference would be accounted for otherwise than by being flared. Now as you pointed out to me in connection with the years 1935, 1936 and 1937, a substantial part of that was flared but not in 1943.

Q That is right.

A Now I wonder if I could have the question you put there repeated?

Q For the purpose of your appraisal.....

THE CHAIRMAN: Mr. Hamilton wanted the question repeated to make sure that he had it right.

MR. CHAMBERS: That is what I am going to repeat to him.

Q For the purpose of your appraisal or rate base recommendations you are charging against Madison for the benefit of future consumers past or accrued depreciation based on or mesured by

large quantities of flared gas.

A Based on large quantities of gas that was gathered, of which the residue was flared.

Q Yes, that is right.

A Yes.

Q Am I right in this, Mr. Hamilton, that your method of computing accrued depreciation on gathering lines and compressors as shown on WH-11, does in fact increase the over-all depreciation deductions because of lack of conservation methods prior to 1938?

A No sir. It increases the throughput, pardon me, or it increases the measure of depreciation because the throughput was higher, irrespective of why it was higher.

Q Well I probably in fairness should say this, you will agree with me that one of the reasons why that throughput was higher was lack of conservation?

A Yes, and I am also assuming that when the gas was put through the line, it was put through for a good purpose, and a sufficient purpose to the operator of the system anyway.

Q Oh yes, because there is no doubt about it, the gas went through the absorption plant?

A Quite.

Q What I am suggesting to you is this, that if the conservation law had been in effect prior to 1938, the throughput, and this refers to the wet gathering line, would not have been so great as is shown on WH-11?

A That is right, and future reserves would be correspondingly high.

Q What I am leading up to is this, that if there had been conservation in effect in those years, that it might very well

have been that the percentage of the nature arrived at in WH-11 would have been more nearly approximate, and maybe fairly close to the other percentage arrived at taking the dry gas basis?

A I do not know.

Q They would have been closer together anyway?

A Yes. Now, a moment. I am not sure that is the effect of it. I would say that if conservation had been in effect in the years that you refer to, then the total throughput to date would be less than it is, and the future reserve would be higher and the resulting average weighted percentage of depreciation applicable would be correspondingly less. But in comparing the effect of the two tables, 11 and 12, you must also take into account that not only are the throughputs different but the prospective reserves are different by reason of the fact that the Madison scrubber will get the benefit of the gas that comes to it from the British American or will come to it from the British American, Consequently, it is a little difficult to relate one table to the other.

Q What I am saying is this, the two percentages would have been nearer together?

A Yes.

Q We cannot attempt to decide what they could be?

A Certainly. The percentage on WH-11 by itself would be lower.

Q Now am I right in this, that on WH-6 of Exhibit 124, which is your adjusted historical cost you have applied the same percentages for accrued depreciation as you have applied on WH-4 to your unadjusted historical cost?

A Yes.

Q Now then, WH-6 shows an item in the second column of

$14,467.00 under Glycol and M.E.A.?

A Yes.

Q That is for Glycol solution and you have depreciated that item by 20.09% on a weighted average, is that right?

A Yes.

Q Now, Mr. Hamilton, my information is that Glycol solution was acquired in 1941. Assuming that that be so, should not it be only depreciated by 8.7% as shown on WH-12 which is the percentage applicable to the year 1941 additions?

A If you take the item by itself yes, there is a tendancy there to depreciate that particular item heavier than it should be depreciated. But it is only part of a total adjustment of $227,000.00. If we wanted to be precise with it, I think I would have depreciated it at the rate applicable to the Girbotol scrubber as a part of the scrubbing plant.

Q Now, Mr. Hamilton, I am going to put to you a statement of one of the Judges in the United States Supreme Court. I am still dealing with this question of depreciation. I am reading to you an abstract from the judgment of Mr. Justice Butler of the United States Supreme Court in the case of McCardle et al v. Indianapolis Water Company, 272 United States Supreme Court Reports at page 400. Mr. Justice Butler says this, and he is talking about a rate base that was fixed by the Commission. He says:

> " There is deducted approximately 25% of the estimated cost new to cover accrued depreciation. The deduction was not based on an inspection of the property, it was the result of a straight line calculation based on age and the estimated or assumed useful life of the perishable elements. The Com-

"mission's report indicates that the property is well planned, well maintained and efficient."

And then he goes on:

"The testimony of competent valuation engineers who examined the property and made estimates in respect to its condition, is to be preferred to mere calculations based on averages and assumed possibilities."

Then he goes on:

"The deduction made on the City's estimates cannot be approved,"

and he quotes a lot of cases. As I take it then you do not agree with that so far as its application to this particular case?

A For two reasons. First of all that he was speaking of a different type of property altogether, and I have tried to emphasize throughout that the utilization of the throughput formula must be predicated on the assumption that the physical property will last their economic life. The other objection I have to it is probably expressed in some recent United States Supreme Court decisions where they take the contrary view, and maintain that cost less depreciation is proper in regulatory cases and is to be preferred to estimates of engineers.

Q You are referring to the recent American cases and you are referring to those that arise from the Federal Power Commission?

A That is right.

Q The Federal Power Commission acts under a specific statute?

A Yes.

Q Which deals with actual legitimate costs and so on?

A Yes, that is right.

Q You have read the McCardle case have you?

A I do not remember it specifically.

Q But I am asking you to assume that the McCardle case was concerned with the matter of present day values for the purpose of rate regulation?

A Yes.

Q And that that was what was involved in the appeal to the United States Supreme Court and Mr. Justice Butler is here referring to the matter of what should be the rate base. As I understand you to say for reasons of your own which you have expressed here, you disagree with that in its application to this case?

A Well I believe there you have to have regard to both aspects of the matter. You cannot deal with one exclusive of the other.

Q One of the what?

A One point of view with respect to how you should determine valuations. I certainly feel that the advice of engineers who examined the property is very essential to the Board.

Q Well bear in mind in this case the judgment I quoted to you that the Commission did - well Mr. Justice Butler says:

> "The Commission Report indicates that the property is well planned, well maintained and efficient."

And with that information they made a deduction of 25% for accrued depreciation, and it was not based on an inspection, and that is admittedly practically the same thing you have done is it not?

A That is right,

Q It was a result of a straight line calculation based on age and estimated or assumed useful life of the perishable elements. And Mr. Justice Butler, sitting as a member of the Board, said

that that was not in his opinion good enough for the purposes of arriving at a present day rate base for fixing rates. In other words, what I am putting to you, Mr. Hamilton, is that if I should put to this Board that they should arrive at a rate base on the basis of Mr. Justice Butler's judgment, you disagree with that?

A That is right.

(Go to page 3825.).

Q Now I have before me the Journal of Accountancy for March 1945 which is the official organ of the American Institute of Accountants. I gather that ?

A That is right.

Q And on Page 254 of that publication, under the heading of "Official Decisions and Releases", there is a letter quoted which is headed "Public Utility Depreciation", and this letter is directed by Walter A. Staub, Chairman of the Committee on Accounting Procedure of the American Institute of Accountants, and it is dated 28th January, 1944, and it is directed to Mr. Nelson Lee Smith, Chairman of the Committee on Depreciation of the National Association of Railroad and Utilities Commissioners. Perhaps you have read that ?

A No, I am hearing that for the first time.

Q You are familiar with the report ?

A Oh yes, the latter report on depreciation, oh yes, quite.

Q And this is a letter from the American Institute Committee to this N.A.R.U.C. and this is one thing they say on p.254: "We believe that your report should make clear, either in the definition or elsewhere two points which are emphasized in the definition contained in Research Bulletin No.20 and the note attached thereto. The first is that depreciation is a process of conventional allocation, not of valuation. It follows that costs less depreciation cannot properly be described as a value figure." If you want to have a look at that, would you subscribe to that statement ?

A I agree with the first that depreciation is a process of conventional allocation. I won't go beyond that where it says "not of valuation". It depends upon what you mean by valuation. These terms are very loose and have many meanings. For example

costs less depreciation is definitely the one and only value for depreciation purposes under income tax regulation and is the only value in most cases and yet it is not the value which you might use for something else.

Q But you would not go that far with respect to valuation of what we are talking about here ?

A I will go this far that depreciation is a process of conventional allocation.

Q But you are not prepared to agree to the next statement ?

A That costs less depreciation cannot be properly described as the value figure. I say it cannot be, not for all purposes.

Q Well I propose now sir to go into another matter that might take up a little time and I do not want to break it in the middle and I would like to go into it now.

THE CHAIRMAN: The only thing is that we have only two Reporters and I think it would be very much better if we kept on to the end of the present Reporter's take.

MR. CHAMBERS: Yes.

Q Well I want to discuss with you Mr. Hamilton the case that was referred to by Mr. Justice McGillivray in the McGillivray Commission judgment. The International Railway Company and Niagara Parks Commission, which is reported in 1937, 2 W.W.R. p. 641. That is the Privy Council Judgment and the judgment of the Ontario Court of Appeal is found in 1936, O.L.R. p.195, are you acquainted with that case at all. Have you read it ?

A I may have, but I do not recall it though.

Q Now in order to give you a short summary of what it was all about I will read you the last two paragraphs of the headnote: "Under an agreement confirmed by Statute, between Respondent Commissioners (that is the Niagara Parks Commission called the

Respondents here) and the predecessors in title of appellant company with respect to a franchise for an electric railway which had now terminated, it was provided that on its determination the company should be duly compensated for its railway, equipment, machinery and other works, the compensation to be determined by arbitration. On the termination of the franchise, the railway, with its equipment, machinery and other works, passed to respondent commissioners as an organic railway capable of operation in situ. The railway had not been, and could not be made to be, a financial success, but the agreement expressly stipulated that the company was not to be compensated 'in respect of any franchises for holding or operating' the railway.

HELD that, on the proper construction of the agreement and statute, the compensation should not be fixed (as decided below) at the break-up value of the railway to the commissioners, but on the basis of reconstruction cost less depreciation. The effect of the words quoted was to exclude any allowance for past or future profits."

Now the words, the company was to be compensated and the amount was to be fixed by arbitration and in this case no rule of thumbwas laid down or any particular means or guide set forth in the statute. Now then the majority of the arbitrators found a value of $179,104.00 on the basis of "scrap value". The value now less depreciation as found by the arbitrators was $967,592.00.

Now Mr. Hamilton, this property was constructed back in 1894 and it had been operated for nearly 40 years as at September 1932, that is the date, an important date, as the headnote indicates, it was a financial failure

and could not operate at a profit in the future as it was an obsolete means of transportation. By the way it was that railway down in the Niagara Peninsula. But in 1932, the date we are talking about it was nevertheless an operating railway. The company after charging depreciation and allowing for bond interest showed a loss for each of the prior 13 years. Now the arbitrators did find while they were not agreed - the majority of arbitrators - while they did not agree that this was theproper compensation-for the purposes of the record they found- they all did - that the present value based on reconstruction costs now was $1,414,684.00, and that depreciated it was $967,592.00, or in other words that the depreciation existed for the purpose of the valuation was $447,092.00. Now just for the purpose of all parties concerned, those last figures will probably not be found in the Privy Council judgment but will be found in 1936 O.L.R. at p. 200. Now in arriving at a present day value on a reconstruction basis the arbitrators deducted that $447,000 odd and I am quoting now from the Privy Council judgment: "A proper allowance for age and obsolete type of machinery and equipment". Now assuming the facts are as I have given them to you, it would be obvious would it not Mr. Hamilton that they deducted nothing or they did not measure their depreciation on any expired service life business ?

A I do not follow that.

Q You do not agree with me. I am suggesting they certainly did not adopt the method that you recommend here ?

A Oh no the situations are totally different.

THE CHAIRMAN: Was there not a reservation in that case Mr. Chambers ? Didn't Lord Macmillan indicate in his judgment

that if the rates charged by the company included depreciation that different considerations might apply ?

MR. CHAMBERS: I remember you referred to that before in another trial, but the fact remains this company did take depreciation after charging depreciation and allowing for bonds they did in fact take depreciation.

THE CHAIRMAN: However I interrupted you, I will try not to do it again.

Q MR. CHAMBERS: Then, Mr. Hamilton, as indicated on pages 651 and 652 of the Western Weekly Reports, the Court certainly held that past losses or profits had nothing to do with ascertaining present day value and the headnote would indicate that?

A I would agree with that to be sound. There might be exceptions to that though.

Q What I am suggesting to you is this that in fixing the present rate base an amount is to be arrived at which would be fair compensation to the Madison Company. Now I do not mean to be paid it today but a-fair compensation in this way that at the end of the operation it is to be compensated through the future depreciation and in the meantime until it gets that money it is to get a fair rate of return ?

A Right.

Q Would you agree that is what the Board should endeavour to do in this case ?

A Yes.

Q And if there are any particular rules laid down I am suggesting to you that this decision to which I refer might very well be of value as a guide to this Board. What do you say as to that ?

A Well if there are any particular rules laid down in the statute then the Board I presume is not only entitled to, but obligated

to have regard to various points of view in rate base determination.

Q Well let us assume it this way. Take this to be the case. The statute - lay that aside for the moment. Say what is desired to be done is to fix an amount which will be fair compensation to this Madison Company by way of return of depreciation for the future and pending the return of that money, a fair return on the money. And under that case that I have read to you, the tribunal must find a fair compensation or duly compensate. Now what would be the difference. Why should there be any difference in arriving at those amounts in those two cases. Why should we not follow that too, if that is a proper rule in that case, why should it not be used here ?

A Well there is quite a difference between a railroad and a gas gathering system.

Q No, but there was a railroad that was out of date and was going into the ash can pretty soon. I say afortiori should not this rule apply here ?

A No I would not think so.

Q You do not think that the Commission or that the Board - you do not recommend that the Board follow the base laid down here ?

A No.

Q Why ?

A Because the properties are different.

MR. FENERTY: There was actual cost ?

MR. CHAMBERS: Present day.

Q MR. CHAMBERS: Well if that decision is sound what justification is there for gauging the present net value of Madison property for the purpose of this hearing on past through put ?

A The value for any purpose in connection with the physical assets of the Madison system is conditioned by its capacity to perform a useful service.

(At this time the Hearing was adjourned for a short period)

(Go to Page 3832)-

MR. HARVIE: Excuse me, Mr. Chambers. Mr. Chairman, I wonder if it would possible to have the Hearing adjourned about 12.30 today. It just happens that I have an engagement that I and some of my associates would like to attend as shortly after that as possible.

THE CHAIRMAN: I am perfectly satisfied, Mr. Harvie. I think perhaps it would suit the Court Reporters today, the way conditions are. Does anyone object?

MR. McDONALD: Mr. Chambers might be finished by that time.

MR. CHAMBERS: I hope so, I will try to.

THE CHAIRMAN: That is a good suggestion.

Q MR. CHAMBERS: Mr. Hamilton, have you read the decision of the Public Utilities Board in the 1921 Calgary Gas Hearing?

A Well I have, but it is some time since.

Q Now I have a copy of it here and the Board there fixed a rate base for the Gas Company of $5,778,508.29 and they made that up as follows:-

The actual investment was $5,253,189.36 plus 10% for intangibles $525,318.93 and those two figures added together make $5,778,508.29.

Now in that case, the Board said this:

"The Board thinks further that in view of the evidence as to the condition of the Plant and in view of the principle adopted in arriving at the valuation of the system, that it should not make any deduction for depreciation."

They took there, as I understand it, the historical cost, the actual investment. What would you say to the suggestion of a rate base on that basis?

A Taking no depreciation whatsoever?

Q That is right. Would you like to take a look at this?

A I would say, sir, there were exceptional circumstances that obtained in that 1921 case that do not necessarily apply in this present case.

Q What would you suggest then are the special circumstances?

A One of the circumstances suggested in this sentence that appears at the top of this page you have referred to:

"The evidence before the Board is not all that could be desired but it is inclined however to accept the evidence submitted by the city as to the capital investment. However it is making a further allowance for certain intangible assets that are usually allowed a company in such cases."

Q I suggest to you, Mr. Hamilton, that by that statement the Board is referring to this, the Company gave evidence of value on a reproduction cost new basis. They did not give the evidence as to historical cost. The City put in the evidence on the historical cost basis and the Board, when it refers to the unsatisfactory evidence, is referring to the fact that the City, or that the Gas Company itself did not put in the historical cost. I am suggesting to you that is what they are referring to there and that that statement, the basis of the statement of the Board, later on when it says:

"Now due to the manner and so on."

A That may be. I cannot say to that. However I will say this, except under most unusual circumstances depreciation should be deducted in arriving at a value for rate determination.

Q I am referring again to that statement that I quoted to you, "The Board thinks further that in view of the evidence as to the condition of the Plant and in view of the principle ad-

"opted in arriving at the valuation of the system, that it should not make any deduction for depreciation."

I am suggesting to you that a fair inference from that statement is that the Board realized that they were fixing a valuation, that they were taking straight historical cost, which in itself was not necessarily a valuation and that in order to reconcile the two and hold the balance evenly between the two interests that if they were going to take historical costs rather than the present-day value that an adjustment should be made by not taking depreciation. Would you suggest that is a fair inference from that statement?

A Well I would hesitate to comment on the propriety of that sentence taken from its context and if you wish I would be happy to review the whole decision.

Q That is quite satisfactory. I do not want to take you by surprise. Then we can probably deal with it later on, if you will read that.

A I will be glad to do so, sir.

Q And if there is anything you disagree with in that probably Mr. Blanchard could deal with it in re-examination. Now to some degree at least I think you already have told me that your recommendation omits or does not include the certain amounts which the Royalite shareholders in the past ploughed back into this property and paid for from operating expenses.

A I did not go that far, Mr. Chambers, I do not think. I think I made the statement at one time that our examination of the Plant records of the Royalite Oil Company and a comparison thereof with the contents of Mr. Hill's appraisal satisfied us, after substantial study, that the assets included in the

appraisal and the assets included in the Plant records were substantially the same assets.

Q Substantially the same?

A Were substantially the same assets. In other words, where additions have been made to the assets and the asset replaced had been withdrawn from the records and a new asset substituted therefor, so that the cost records did reflect very largely the specific assets which were valued by Mr. Hill. I do recognize, however, that from the evidence that I have heard that the Royalite Plant was in excellent condition, in possibly better condition than one would ordinarily expect in a Plant of that character.

Q But the fact it is in excellent condition will affect to some extent the amount of maintenance that would have to be provided for in the future would it not?

A Yes. I think that is one of the reasons which impelled Mr. Hill to reach the conclusion that the Plant would last the field. If the maintenance had not been maintained to an excellent degree, that condition probably would not have obtained.

Q On the other hand you might have a Plant not in as good condition as this one happens to be, when speaking from an engineering standpoint, but would last the life of the field. But you would have, from year to year, to spend more on maintenance.

A That is correct. On the other hand, we should not overlook the fact, too, that we might have in some instances assets of a durability greater than we require.

Q And I think you already told me that the adjusted historical figure does not include all the money that is spent by Royalite on the Plant which might properly have been capitalized on its books.

A If I made that statement I doubt that I should have. We made an adjustment to add to the historical costs the scrubbing plant chemical and for an allowance for the use of construction tools and so on and also for general overhead. Now it may be that there have been charged to the repairs accounts during the last number of years items which under another treatment might conceivably have been capitalized but I do not hold the view that that amount would have been substantial. I would like to say this that I think to some extent at least that would be offset by the fact that there will undoubtedly be in the historical cost items which might since have disappeared, minor items.

Q Well one of them was that item I think I referred to you before of the installation cost for the line that had been taken out and then later incorporated, laid down in another place. I put it to you that should not that item be included and you in any case for your rate base have excluded it.

A Yes.

Any place we saw it we took it out.

I am suggesting that there might still be a substantial amount there that we do not know about and consequently have not adjusted.

Q You have not found any?

A No.

Q If you found any, you have taken them out?

A That is right.

Q I am instructed, Mr. Hamilton, that the matter of surface and legal expenses for rights of way have been charged to expense in the past and that they are not in the capital account. If that were so, should not we take that into account?

A If I might direct your attention to statement W.H.10 and particularly the first column of this, you will find that the total amount showed by the Royalite Plant ledger controls relative to the particular assets we have under consideration amounts to $1,996,884.27 to which we have added an amount of $4,045 for lands, right of way, not included - meaning not included in the foregoing.

Q Yes.

A At an appraised value. We adopted Mr. Hill's value for that item of $4,045 and after adjustment or possibly included in these lands and right of way in the figure of $1,930,971.77 which we have used throughout as the historical cost.

Q I am still instructed by Mr. Smith, Mr. Hamilton, that even those figures do not include all the surface and legal expenses. Now assuming that is so. We have to substantiate that.

A Yes, I would not be surprised.

Q Assuming that is so, these items should be added to a rate base constructed on an adjusted historical cost basis should not they?

A My recollection is that legal expenses are properly to be treated as part of the overhead account.

Q In connection with lands and rights of way?

A The over-all legal expenses.

Q And surveying?

A Why would not that be the best way? It depends on how liberal your overhead allowance is, whether it is sufficient to cover things or that character or not. I would think it would be.

Q Probably we cannot agree on this at the moment but I am suggesting that general overhead was not intended to include,

even on Mr. Hill's suggestion, that kind of legal expense.

A He includes something for legal expenses, 9%.

Q I am also instructed that plant fences and the grading of the yards have been paid for as expenses and have not been capitalized in the Company's books. Not in all cases, there are some.

A I know there are some fencing items and similar charges that are capitalized.

Q Yes and I am instructed that there are others that are not. If that be so, would you agree that in fixing a rate base on an adjusted historical cost basis that these items should be included?

A Yes.

Q The same thing applies to sidewalks and things of that nature. I am also advised that a considerable portion of the Girbotol experimental expense...

A Yes.

Q Was paid by way of expense and has not been capitalized.

A That is right. I think consideration should be given to that.

Q I am also advised that in the gross historical cost figure which you have used and taken from the Royalite books there is an item which is included in your figures as a new figure - and I am not criticizing you because you took it from the books - of $1 in respect of heat exchangers which Mr. Hill says now would cost $3,650 and that even in their present state of depreciation and so on are worth $3,100. But the fact is that they appear in the Royalite Company's books at a dollar and were included in your gross figure and in turn they are depreciated by 27% or whatever that figure is. I am suggesting this, to give you the whole picture that is in my mind, that the reason that that particular item happens

to appear in the Royalite books as $1 is because it was used in another operation somewhere in the Company's system and that it was wholly depreciated on the books of that department and was turned over to this department and put in at $1. What I am suggesting to you, Mr. Hamilton, in a case of that kind, to get a fair adjusted historical cost is that these items should be reconsidered and put in at some basis higher than a dollar in any case. What do you say as to that?

A This whole question of the nominal values placed on certain tag ends of equipment was the subject of a rather lengthy discussion between myself and my assistant and some of the officials of the company. If you will excuse me for one moment, I think I can turn up the memorandum on that interview which might indicate to you some of the reasons put forth at that time. Well this probably is a direct answer to the point you raised there and possibly it will save time if I read part of this memorandum into the records. That deals with your point.

"It will be noted that a number of assets, particularly boilers and meters, have been set up at their nominal value of $1. These represent articles of which no trace could be found in the Royalite Plant ledger although they were actually in existence as shown by the Hill inventory. The assets in question are no doubt worth a great deal more than the $1 figure would indicate, but for historical cost purposes, no adjustment has been made thereto for reasons outlined below.

(1) assets fully depreciated may have been written out of the Plant ledger and later transferred to a new location, no record of the transfer being made in the records. This

"no doubt is one of the reasons why no record could be found of some of the assets inventoried. This would not occur very often, however, since the assets in question are comparatively small, and in any case it would be difficult to determine which of the assets have been treated in this way."

That is dealing with items of a similar character to these and I cannot identify one from another.

"(2) It is conceivable that certain of the assets may have been expensed. However, this also is unlikely and no adjustment can be made for this since it would be next to impossible to locate the items in the expense account."

(Go to page 3841)

I would qualify that and say that I think the effect of it is not very substantial.

(3) In the majority of cases what probably has happened is that the assets inventoried and not set up on the books, actually were capitalized and have lost their identity through being included in the cost of larger items located elsewhere in the plant records. In such cases, the undervaluation resulting from setting up the assets at a dollar, would be offset by a corresponding over-valuation in other assets. While the other assets are not necessarily owned by Madison there would of necessity be other cases in which the reverse situation would obtain, that is assets under-valued in Royalite records may be over-valued in Madison costs.

(4) It has been the Company's policy to capitalize the cost of maintaining service while repairs to lines are being made. We have had them make adjustments where we knew this definitely to be the case, but there were some borderline cases in which we gave the Company the benefit of the doubt, and there are no doubt other cases of this nature which did not come to our attention. Any over-valuation from this source would tend to offset any under-valuation resulting from setting other assets up at one dollar.

(5) Some assets in the inventory show a book cost considerably higher than the appraisal figure.. It is conceivable that the appraisal is wrong. This was prepared as an internal memorandum. But in most cases this is due to capitalizing items which could properly be expensed. For example, it came to our attention in the couse of the analysis that one asset had been transferred from one location to another after considerable use, and the Company had capitalized not

only the original new cost of the asset, but approximately $1500.00 repairs to make it usable. This particular item was adjusted so that the $1500.00 does not appear as part of the book cost , but if closer examination were made of all the assets with high book costs, it would probably develop that there are other cases in which comparable circumstances obtain.

(6) In trying to arrive at a figure representing the intangible costs of installing equipment no longer in existence, we took the most lenient view possible, in assuming that all assets known definitely not to be in existence, were still being used in the company's operations.

The rest of it does not add very much to it. In other words, there were certain factors on both sides which were absolutely incapable of determination and could not be reduced to dollars and cents. Having canvassed the whole situation, we thought that substantial justice was being done on both sections by offsetting one against the other.

Q I think you told me when we met in October, Mr. Hamilton, that from 1921 onwards this Royalite Company had from an accounting standpoint kept its books most conservatively, is that right?

A I think so. It intended to.

Q And from your experience in going over the books would it not be fair to say that they certainly did not have a tendency to over-capitalize, so far as the books were concerned?

A That is right.

Q And as I understand it you now recommend, not a straight historical cost but an adjusted historical cost because you realize that the way the books were kept by the Company under

private operation, they might not reflect the entire picture is that right?

A Well, I know it did not. In a certain particular kind of case, which I think was admissible, I definitely think they were not capitalized. I did not do it just to be safe.

Q Now Iam suggesting, if you are taking the adjusted historical cost, that the mere fact that you cannot put your finger on a specific account and trace it through the books, is no reason why in the Board finally fixing compensation or a rate base, so as to hold the balance properly between the company and the public, that is no reason why some item should not be put in at more than one dollar?

A Well what I was trying to make clear was, when I started out, an adjustment should be made for that but I did not know how much the adjustment would come to in dollars and cents, and I knew that there were other adjustments that ought to be made in the other direction, which could not be reduced to dollars and cents. The necessity of both was present and recognized and so we offset one against the other.

Q I am not going through all of these but I am instructed that there is another item in of $4.00, "Receiving tanks, steel, horizontal" and so on. That Hill says its depreciated value today is $2,851.00, and that that appears in the rate base you recommend at $4.00, less 27% or whatever it is depreciated. And there is another item of $3.00 for a flow meter and that that depreciated is today valued by Hill at $378.00. Now take the question of meters. I think you told me that you treated, I think, the automotive equipment and so on on a different basis than a reproduction cost new, because they were not, well, that they were not part of the built-in plant, something of that nature? Is that a fair way to put it?

A The fact that they are separable, I think, is a consideration.

Q And I suggest that this question of meters, while it may not be in exactly the same position as automotive equipment, that they are pieces of equipment that are almost like currency. They are valuable anywhere at any time, and it is most unfair - I am not suggesting for amoment that you put them in for any ulterior motive, but I do say in adjusting your basis that is recommended, that it is infair to include that meter that Hill now says is worth $378.00, to include it at $3.00 less depreciation. What do you say as to that? Do you not think some change should be made in that connection?

A We gave it very serious study because we were naturally anxious to reach an equitable conclusion with respect to the historical cost, and as I say we realized that upward adjustment would be proper with regard to all of these items to which you refer, but on the other hand there were other items of say the same order of importance, which we could not deal with either, and they were in the reverse direction. So we offset one against the other. Any adjustment that would be made would be purely arbitrary.

Q Well would it be fair to say this, that in arriving at this adjusted historical cost which you recommend, that it was necessary for you to make some pragmatic adjustments?

A Oh yes, but they were all made in consultation with company officials and I think we agreed pretty well all the way along as to what was fair treatment for that purpose.

Q The Company, of course, did not agree that the rate base should be on this basis?

A My last words were "for that purpose".

Q My instructions are, Mr.Hamilton, that going through here there

are a considerable number of items in here - for instance here is an item in at $1.00 that Mr.Hill says today is worth $160.00 and that is a pump. And there are several items, meters. Rather than go into all the details, would you be prepared to agree that if the Board is to take the adjusted historical cost there should be some revision or adjustment, further adjustment or revision made in respect to these items?

A Provided that they also make an adjusment for the contrary items, to the contrary effect, suggested in the memorandum I read into the record.

Q Well I understood you in your memorandum to say you assumed that in such case there must have been certain items that would offset that. Did you have any concrete evidence of that or did you just suspect or assume that might be so?

A Yes, there was concrete evidence, yes. In this respect. We know it was a fact that the Royalite Oil Company had on more than one occasion acquired joint properties, buying a lease with a well on it, a producing well and equipment, and odds and ends of salvage, miscellaneous equipment, and the Company officials, having arrived at a lump sum price, for example with respect to that whole property, had to then assign the various items that were represented by way of property to individual deals.

Q Did you have any concrete information that they had over-valued, say in the matter of the division. That it was over-valued so far as appeared in this historical cost,

A My recollection is that there were cases that they paid a lump sum purchase price for the property, with the wells and some equipment and it was divided up and the very nominal value of $1.00 placed on certain of them, and the remainder of

the consideration all applied to the balance. In other words, this is purely hypothetical, but indicative of what has taken place, they might pay say $100,000.00 for certain lease and certain wells and certain equipment and so on. They might state $1.00 as the value of the lease and the rest of the consideration had to be then applied to the remaining assets that were taken over. Now if the lease is worth more than a dollar, the lease is under-valued and everything else is over-valued. If there was any equipment so acquired by the Company and found its way into this Madison base, it would be overvalued.

(Go to page 3847).

That is my recollection Mr. Chambers. I may have -

Q My information is that anything Madison has taken over - any items that are in that situation are very very minor.

A Well I do not know as to the physical facts but I do know that your Royalite practice and I would imagine that such things as pipe, meters and odds and ends of that kind would have been acquired in that fashion but to what extent I do not know.

Q You agreed most fairly to my submission that the big depreciation of Royalite did not enter into the picture ?

A That is right.

Q Now if for instance this item, first item of the heaters, put in at a dollar and a new item in the order of $650.00, if that had been put in at a dollar because it had been written off in another department of Royalite that fact in itself should not enter into and diminish the historical cost for the purpose of arriving at a just and equitable rate ?

A That is a fact. The fact that because depreciation was applied shoudd not result in the assets being taken over at a dollar value necessarily.

Q Now my instructions are that there are a large number of meters that were used in the other branch of the business and that by reason of the reorganization and so on that they are now into the Madison system and have been put in at very small amounts from one to five and ten dollars and that those meters new and depreciated according to Hill was many times more than that. Would you say if that were so that there should be an adjustment upwards in respect of those items in arriving at an adjusted historical rate ?

A I quite agree that an upward adjustment must be made for those things provided you make downward revision for those other

things and if it were capable of determination we would have done it. That is within practical limits. If it was practical at all to do it.

Q Now Mr. Hamilton assume with me that Royalite has built and assembled this plant and equipment in question at a figure lower than a smaller organization could have done do you not think that a fair and reasonable rate base should include some allowance or item for that ?

A Well it is an interesting point of view Mr. Chambers. I have given some thought to it but I believe on balance that the historical cost approach in effect takes over the plant as it stands, good, bad or indifferent, and that in some respects there may be features which result in the consumer getting the benefit of the plant which is a better or cheaper plant than it might have been under the circumstances but on the other hand taking for example the Seaboard as an instance, features on which the consuming public has taken over the plant in a sense which is not of the best and when you use the historical approach you take the good with the bad.

Q I am just wanting to put to you an extract from the judgment of Chief Justice Hughes of the Supreme Court of the United States, because I want to draw out your view on that in the Los Angeles Gas & Electric Corporation vs. Railway Commission of California, (1933) 289 U.S. 28 . Chief Justice Hughes says this:

"This Court has declared it to be self evident that there is an element of value in an assembled and established plant, doing business and earning money, over one not thus advanced, and that this element of value is a property right which should be considered in determining the value of the property upon

which the owner has a right to make a fair return.....
The going value thus recognized is not to be confused with goodwill, in the sense of that element of value which inheres in the fixed and favourable consideration of customers, arising from an established and well-known and well-conducted business which as the Court has repeatedly said, is not to be considered in determining whether rates fixed for public service corporations are confiscatory."
And then he ends up, "The concept of going value is not to be used to escape the just exercise of the regulatory power in fixing rates, and, on the other hand, that authority is not entitled to treat a living organism as nothing more than bare bones".
Now I am suggesting Mr. Hamilton, on your statement of adjusted and historical costs, assuming those costs in the Royalite books are, and it can be established to the satisfaction of this Board they are, less than what ordinarily it could be built, that something should be allowed for that in a rate base put together on that basis. On an adjusted historical cost basis. And I suggest that the decision I have read to you indicates that the Courts have recognized under certain circumstances. What would you suggest to that because your rate base you say excluded certain things. I am trying to get your ideas as to whether you think something might well be added in respect of going value or whatever you want to call it ?

A I have not come to any conclusion in regard to going value. At this present time my impression is against it but I have not come to any conclusion.

Q Thank you. Now if the Natural Gas Utilities Act had authorized the Government to expropriate and take over this Royalite

property that was transferred to Madison at a price or for compensation to be fixed by arbitration would you say that your figure of $1,573,688.40 would be fair and just and proper and equitable for the fixed capital assets ?

A It might be.

Q But you have some -

A I think there is an entirely new suggestion injected there which is that the Royalite Oil Company is thence forth out of business at a time when it did not possibly choose to go out of business which is essentially different from the present case.

Q Well then would you go as far with me as to say that you think we would be entitled to more than $1,573,688.00 under the situation which I have described ?

A The one of expropriation ?

Q Yes.

A I think it would depend upon the circumstances. I had not considered it from that point of view but the circumstances are different.

Q I have another theory I want to put to you, Mr. Hamilton. I suggest to you that if the Madison rate of return is to be fixed and based on and in relation to present day rates of return, those rates of return should be applied to a rate base computed on present day values. What do you think of that ?

A Is your suggestion, I want to get my own mind clear, is your suggestion this that if the consumers have the benefit of lower interest rates he must also take higher price levels. Is that what you mean ?

Q I say this, that is a test that the Board sometime in this Hearing has got to decide what the fair rate of return is and

one of the tests is to find out what rate of return is in other lines of business of similar risks and so on ?

A Yes.

Q And the Board has to gauge that under present day circumstances and will have to find out present day circumstances, and in other words it is the present rate of return in relation to other rates of return ?

A That is correct.

Q What I am suggesting is if you are to have a present day rate of return that should be applied to present day values ?

A Not necessarily.

Q You do not agree with that ?

A No. I think it is a factor which tends to support the reproduction theory particularly on the point of price levels but I do not say it necessarily follows.

Q But what I am suggesting is that it should follow in equity in case of the property being brought under regulation for the first time ?

A Not necessarily.

Q Why ?

A I have it in mind this, this property has not been bought and paid for on present day price levels. The consumer is paying in the ratesfor the next twenty-five years shall we say, an amount for depreciation. That amount is recovered by the Madison Company and returned by it to its shareholder or shareholders in varying amounts which we might say roughly evens up on an annual basis for the next twenty-five years, and who shall say what the price level shall be for the next twenty-five years. I think the position would be different if it were a cash payment made today which Royalite had to find a use for today.

Q Well I think you already told me that the rate base now to be fixed should together with the rate of return to be allowed thereon afford to Madison due and fair compensation for the devotion of its property to the public service. Now will you agree with that proposition ?

A That is right.

Q And that the rate of return is to be fixed on the basis of or compared with the present day rate of return. That is one of the things that this Board has to consider ?

A I have not said that yet have I ?

Q No. I am asking you whether you agree with me.

A Would you read your question again please.

Q That the rate of return to be fixed must be on the basis of or compared with present day rate of return ?

A It is related to present day rates of return for present day purposes, but nothing has been suggested it should remain constant.

Q Oh no. I think we have already in our previous discussions, but in order to work it in here will you agree with this, that the dollars spent in 1926 we shall say, is as compared with the present day value of the dollar worth considerably more than today's dollar ?

A That is right.

Q Now bringing that down to a concrete example. A house built by me say in 1933 can, if kept in good repair, be sold today for considerably more than it cost ?

A That is correct.

Q Now suppose that I spent we will say $8,000.00 for a house in 1936 and have kept it well maintained and modernized in a good location, I could probably sell it for around $12,000.00,would

that be a fair assumption ?

A That is not an offer is it ?

Q No.

A I would think so.

Q Now why should not Madison rate base be fixed in the manner to give it somewhat the same break ?

A Well there are several considerations that enter into that question. The first of them I have already referred to, and that is the fact that you are not selling the Royalite assets to the public for a lump sum payment in 1944. You are devoting those assets to the public service and will receive payment or the shareholders will ultimately receive payment spread over a number of years when different price levels will obtain whatever they may be. In the second place, this plant was not reproduced in 1944 from a realistic point of view. You have to take the facts as they are, which is that the money which is actually devoted to the erection of this plant and construction of lines and so forth was put in at periodswhen the price levels were considerably lower and your proposition would result in the total of that capital gain accruing to the shareholders of the company as if they were making a sale - as if there were someone prepared to buy that plant at that price. Now one of the reasons why you could sell the house for $12,000.00 is because there are people who want to buy this house. There is nothing to suggest here that we have a number of people clamoring to buy the gas system.

Q Is it not fair to suggest that we should not take for granted Royalite might not want to sell it. You are not suggesting other people would not like to be in this business ?

A No, you speak of houses particularly but you have a condition

there of a very scarce supply coupled with a very abnormal demand. Now what the conditions of supply and demand relating to gas plants is I do not know.

Q Let me take this, we will assume, we will say, a packing house business. We will say the business of the company went back to 1921 in a small way until now by a series of extensions throughout the years it is the owner of a large plant. Assume with me that 60% of this plant was built between 1921 and 1939, and that the other 40% was built between 1940 and 1943. Now it is not unreasonable to assume that that plant could be disposed of today by that packing company for considerably more than its actual cost ?

A That is correct.

Q Well now leaving aside the matter of the house, the thing I cannot understand, Mr. Hamilton, why should not Royalite or Madison be given the same break ?

A Because they are not selling.

Q I know but would you consider that as something to do with the the amount for which they are to be duly compensated over the years ?

A Yes.

Q But you have not given it in your adjusted historical cost. You have not given that principle any consideration have you. You have not included that ?

A I wonder if we are following each other. What was this last observation ?

Q I was suggesting to you that while Royalite was not selling and Madison was not selling, that nevertheless the purpose is that they are to be duly compensated and that that factor of present day value should be in the picture somewhere ?

A Yes.

Q And I think you agreed with me ?

A I said some consideration should be given to higher price levels but the particular point that I want to make is that we have no indication before us of what the price levels are going to be when this money is paid to the people who devoted this property to the public service and they must get back the equivalent of what they put in or more or less.

Q Let us take this packing company Mr. Hamilton a little further. We will assume that the packing company could sell it today at a considerably higher figure and with those funds it could acquire another business at present day values or it could change its charter and it might go into the oil business or gas business ?

A Yes.

Q And spend present day values on present day oil business. Now I do not want to be facetious but thing I cannot understand is why Royalite as a shareholder of Madison and the original owner of this property should not be by virtue of the rate base being fixed, be placed now in the same position that it could if it wanted to sell out to someone and go into the oil business.

THE CHAIRMAN: I think I will give Mr. Hamilton until 9.30 tomorrow morning to think over his answer to that.

(At which time the Board adjourned to 9.30 November 6th, 1945)

Mr. Hamilton.
Cross-examination. Mr. Commons.

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Yes.

Had I any conversation with me?

I said some consideration should be given to Hunt's point.

Developed the point that I wanted to make.

Was a conversation before us of what the price Davis was going to pay was going to be paid to the people who operated this property in the public service and they must get back the money they put in or more less.

Is that the thinking company Mr. Hamilton a little further.

Well I assume that the thinking company could sell it today at considerably higher rates and with those rates it could count upon better business and more money than or it could continue the operation and in that way the oil business.

Yes.

Mr. Commons: Mr. Hamilton, I'm not interested in the oil business.

(Adjourned till 10 o'clock to-morrow morning. 1944)